



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2013-0534; FRL-9900-36-Region 9]

#### Interim Final Determination to Stay and Defer Sanctions; California; San Joaquin Valley

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Interim final rule.

**SUMMARY:** EPA is making an interim final determination to stay the imposition of offset sanctions and to defer the imposition of highway sanctions based on a proposed approval of revisions to the San Joaquin Valley portion of the California State Implementation Plan published elsewhere in this Federal Register. The revisions concern the Clean Air Act nonattainment area contingency measure requirement for the 1997 annual and 24-hour national ambient air quality standards for fine particulate matter (PM<sub>2.5</sub>) in the San Joaquin Valley.

**DATES:** This interim final determination is effective on [Insert date of publication in the Federal Register]. However, comments will be accepted until [Insert date 30 days from publication in the Federal Register.].

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2013-0534, by one of the following methods:

- Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.
- E-mail: [wicher.frances@epa.gov](mailto:wicher.frances@epa.gov).
- Mail or deliver: Frances Wicher (AIR-2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

*Instructions:* All comments will be included in the public docket without change and may be

made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](http://www.regulations.gov) is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Frances Wicher, EPA Region 9, (415) 972-3957, [wicher.frances@epa.gov](mailto:wicher.frances@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

## **I. BACKGROUND**

On November 9, 2011 (76 FR 69896), we published a partial approval and partial disapproval of the San Joaquin Valley Unified Air Pollution Control District's (SJVUAPCD or District) 2008 PM<sub>2.5</sub> Plan and the California Air Resources Board's (CARB) 2007 State Strategy (collectively the "SJV PM<sub>2.5</sub> SIP"). As part of this action, EPA disapproved the contingency measure provisions in the SJV PM<sub>2.5</sub> SIP as failing to meet the requirements of Clean Air Act (CAA) section 172(c)(9) and 40 CFR 51.1012, which require that the SIP for each PM<sub>2.5</sub> nonattainment area contain contingency measures to be implemented if the area fails to make reasonable further progress or to attain the NAAQS by the applicable attainment date. *See* 76 FR 41338, 41357 to 41559 (July 13, 2011) and 76 FR 69896, 69924 (November 9, 2011). This disapproval action became effective on January 9, 2012 and started a sanctions clock for imposition of offset sanctions 18 months after January 9, 2012 and highway sanctions 6 months later, pursuant to CAA section 179 and our regulations at 40 CFR 52.31. As such, offset sanctions applied on July 9, 2013 and will continue to apply, and highway sanctions will apply on January 9, 2014, unless EPA determines that the deficiency forming the basis of the disapproval has been corrected.

On July 3, 2013, the State of California submitted as a SIP revision the SJVUAPCD's "Quantifying Contingencies for the 2008 PM<sub>2.5</sub> Plan" (dated June 20, 2013) ("Contingency Measure SIP"). In the Proposed Rules section of today's Federal Register, we are proposing to approve this SIP revision because we believe that it corrects the deficiency identified in our November 9, 2011 partial disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay the imposition of the offset sanctions and to defer the imposition of the highway sanctions triggered by our November 9, 2011 partial disapproval.

EPA is providing the public with an opportunity to comment on this stay and deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of the Contingency Measure SIP, we intend to take subsequent final action to re-impose sanctions pursuant to 40 CFR 52.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

## **II. EPA ACTION**

We are making an interim final determination to stay the imposition of the offset sanctions and to defer the imposition of the highway sanctions associated with our partial disapproval of the SJV PM<sub>2.5</sub> SIP, based on our concurrent proposal to approve the State's SIP revision as correcting the deficiency that initiated these sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiency identified in EPA's partial disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiency that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely

done all it can to correct the deficiency that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiency prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

### **III. STATUTORY AND EXECUTIVE ORDER REVIEWS**

This action stays and defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and

Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefore, and established an effective date of **[Insert date of publication in the Federal Register]**. EPA will submit a report containing this rule and other required information to the

U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **insert date 60 days from publication in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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Dated: August 15, 2013

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Jared Blumenfeld,  
Regional Administrator,  
Region 9

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